STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	**09/02/03**	Bill No:	**SB 1060**
Tax:	**Sales and Use Special Taxes**	Author:	**Senate Revenue and Taxation Committee**
Board Position:	**Support Board-sponsored**	Related Bills:	**SB 1009 (Alpert)**
	No position: §7262.7		

BILL SUMMARY

This bill contains Board of Equalization-sponsored provisions for the sales and use tax and the special taxes and fees programs, which would do the following:

- Extend the due date for reporting and remitting use tax until April 15th of each year so that taxpayers reporting use tax due to prompts on the income tax return will be deemed to have filed timely. (§ 6451.5)
- Allow for the tax payment extensions due to a delayed budget to be effective until the last day of the month following the month in which the budget is adopted. (§ 6459)
- Add a record retention period for the public record created for each tax settlement in excess of five hundred dollars. (§§ 7093.5, 9271, 30459.1, 32471, 40211, 41171, 43522, 45867, 46622, 50156.11, 55332 and 60636)
- Exclude "racing fuel" from the definition of "motor vehicle fuel." (§ 7326)
- Extend the period for filing a refund on tax-paid fuel. (§§ 8105 and 60507)
- Correct an inadvertent drafting error. (§ 60022)
- Add the terms qualified highway vehicle operator, highway vehicle operator/fueler, pipeline operator, and vessel operator to the record section of the Diesel Fuel Tax Law. (§§ 60604 and 60606)

In addition to the Board-sponsored provisions, this bill also contains provisions that would repeal the statutes authorizing the County of Stanislaus to impose a transactions and use tax at a rate of 0.125 percent for funding of countywide library programs and services.

Summary of Amendments

Since the previous analysis, the amendments to this bill remove the provisions that would have increased the use tax exemption for the amount of tangible personal property purchased in a foreign country and personally hand carried into this state from $400 to $800 to conform with changes in the federal duty free exemption. Additional amendments would repeal the statutes authorizing the County of Stanislaus to impose a

transactions and use tax at a rate of 0.125 percent for a period not to exceed five years for funding of countywide library programs and services.

ANALYSIS

Extended due date for use tax

Revenue and Taxation Code Section 6451.5

Current Law

Current law requires the reporting and remitting of sales and use tax on a quarterly basis. In order to facilitate the collection of taxes, the Board may require reporting periods other than a quarterly basis, such as monthly or yearly. Regardless of the reporting period, the tax return and payment of the tax is due and payable to the Board on or before the last day of the month following the reporting period. Failure to report and remit taxes in a timely manner results in the imposition of penalties and interest.

Proposed Law

This bill would add Section 6451.5 to provide that use tax would be due and payable to the Board on or before the 15th day of the fourth month following the taxable year to coincide with the due date of the income tax return. This bill would define "taxable year" to mean the calendar year or the fiscal year upon the basis of which state income taxes are computed.

The provisions in this bill would not apply to any person required to hold a seller's permit or to any person with purchases subject to use tax that exceed $10,000 during any calendar quarter of the taxable year for which the return is filed.

The provisions in this bill would not apply to use tax that applies to a mobilehome, commercial coach, vehicle, vessel, aircraft, off-highway vehicle, or a vehicle subject to the permanent trailer identification plate program. The provisions of this bill would also not apply to use tax imposed on a lessee of tangible personal property.

These provisions would only become operative if Senate Bill 1009 (Alpert) is *not* enacted during the 2003 Legislative Session.

Comments

Purpose. On June 25, the Board voted to adopt a joint effort between the Board and the Franchise Tax Board (FTB) to include a check-box line on the personal income tax return asking if the taxpayer has made any purchases from outside this state without payment of tax. Taxpayers answering "yes" would be directed to file a separate use tax return. Any person who reports use tax from the previous calendar year to the Board in April based on instructions on the income tax form would be subject to interest and penalties since use tax is normally due and payable to the Board on the last day of the month following the quarterly period in which the liability arose. The purpose of this bill is to address this situation and allow an extended period of time for taxpayers to file use tax liabilities based on instructions on the income tax return.

Related Legislation. Senate Bill 1009 (Alpert) contains provisions that would authorize a person to report qualified use tax on their California income tax return for purchases made on or after January 1, 2003, and through December 31, 2009. SB 1009 contains provisions that use tax reported on the income tax return is deemed to be filed timely

provided the income tax return is filed timely. The FTB would transfer the use tax revenues received to the Board.

Tax payment extension due to delayed state budget
Revenue and Taxation Code Section 6459

Current Law

Current law requires taxpayers to file sales and use tax returns on or before the last day of the month following the end of the reporting period. Failure to file the return timely and pay the taxes due would result in the imposition of penalties and interest.

Due to the delay in approving the state budget in 1992, the Board-sponsored Assembly Bill 101 (Stats. 1993, Ch. 324) to amend Section 6459 of the Revenue and Taxation Code to allow the Board to extend the time period in which a taxpayer must file a sales and use tax return when the taxpayer is an unpaid creditor of the state and a state budget has not been adopted in a timely manner. As amended, Section 6459 provides that the return is due at the end of the same month in which the budget is adopted or one month from the due date of the return or payment, whichever comes later. Any taxpayer granted an extension is still required to pay interest on the amount of tax due to the state that exceeds the amount due from the state for the period from when the tax would have been due until the date paid to the state. Prior to passage of this bill, many taxpayers were unfairly burdened by the fact that they owed the state an amount of tax, while at the same time they were owed money by the state that they were unable to collect due to delays in enacting the state budget.

Proposed Law

This bill would amend Section 6459 to provide that the return is due at the end of the *following* month in which the budget is adopted or one month from the due date of the return or payment, whichever comes later, provided the taxpayer is a creditor of the state.

Comments

Summary of amendments. May 5 amendments removed the provision that would have precluded a taxpayer with a tax liability exceeding an unspecified amount from requesting a payment extension due to a delayed budget.

Purpose. Current law may not grant the taxpayer the necessary relief that the statute was intended to provide. The following scenarios illustrate the reason for the suggested change.

Scenario #1: Budget adopted August 30th

Period	Due Date	Last Day for Extension	Days from Budget to Extension Deadline
July Prepayment	August 24	September 24	24
July Return	August 31	September 30	30

Scenario #2: Budget adopted September 25th

Period	Due Date	Last Day for Extension	Days from Budget to Extension Deadline
July Prepayment	August 24	September 30	5
July Return	August 31	September 30	5

In Scenario #1, it is likely that the state will have paid its debts by the time the extension expires and the taxpayer is required to remit taxes due to the state, thus not imposing any financial hardship on the taxpayer. In Scenario #2, it is highly unlikely that the state will pay its debts to the taxpayer before the extension expires. This situation essentially defeats the purpose of the extension which is to allow the taxpayer to postpone payment of their tax liability until they are paid for overdue debts of the state.

The provisions in this bill would address the situation illustrated in Scenario #2. Under the provisions of this bill, the taxpayer in Scenario #2 should receive payment from the state prior to the due date of their tax liability since the extension would be good until October 31, rather than September 30.

Record retention period for settlements in excess of $500

Revenue and Taxation Code Sections 7093.5, 9271, 30459.1, 32471, 40211, 41171, 43522, 45867, 46622, 50156.11, 55332 and 60636

Current Law

Under existing law, the executive director or chief counsel of the Board, with the approval of the Attorney General, may recommend the settlement of a civil tax matter which is subject to appeal, protest, or refund claim, if a settlement is consistent with a reasonable evaluation of the costs and risks associated with litigation of the matter. Settlement proposals may be considered for civil tax or fee matters in dispute under the following tax and fee programs: Sales and Use Tax Law, Use Fuel Tax Law, Cigarette and Tobacco Products Tax Law, Alcoholic Beverage Tax Law, Energy Resources Surcharge Law, Emergency Telephone Users Surcharge Law, Hazardous Substances Tax Law (Childhood Lead Poisoning Prevention Fee and Occupational Lead Poisoning Prevention Fee), Integrated Waste Management Fee Law, Oil Spill Response, Prevention Fee and Administration Fee Law, Underground Storage Tank Maintenance Fee Law, Fee Collection Procedures Law, and Diesel Fuel Tax Law.

Whenever a reduction of tax or penalties or total tax and penalties in excess of five hundred dollars ($500) is approved in settlement of a tax liability pursuant to any of the above-referenced laws, a public record is created with respect to that settlement and placed on file in the office of the Executive Director of the Board. This public record is a one-page document, titled "Public Record Statement," and contains the following information:

- The name or names of the taxpayers who are parties to the settlement;
- The total amount in dispute;
- The amount agreed to pursuant to the settlement;
- A summary of the reasons why the settlement is in the best interests of the State of California; and,
- If applicable, the Attorney General's conclusion regarding the reasonableness of the settlement.

Proposed Law

This bill would add a one-year record retention period to the settlement program.

Comment

Since public access to the Executive Director's office is restricted, an additional copy of the public record statement is retained in the reception area of the Board's headquarters building. No provision is made in the law authorizing the destruction of these records after a reasonable period of time. Consequently, public records regarding settlements which date back to 1993 are currently being retained by the Board. These records will continue to accumulate indefinitely until a retention period is added into the law. The purpose of the change is to add a one-year record retention period for the settlements records that is similar to the requirement described in the next paragraph.

Effective January 1, 2003, Revenue and Taxation Sections 7093.6, 9278 and 50156.18 were added allowing the Board to enter into offers in compromise (Assembly Bill 1458, Chapter 152, Stats. 2002). The offers in compromise provisions have a similar public record requirement as the settlement statutes, but they contain a record retention period that provides that these records will be placed on file "for at least one year." Thereafter, the records may be destroyed in a manner consistent with the Board's record retention schedule after the one year period has expired.

Repeal of County of Stanislaus transactions and use tax statute
Revenue and Taxation Code Section 7262.7

Current Law

Section 7285 of the Transactions and Use Tax Law allows counties to levy a transactions and use tax at a rate of 0.25 percent, or multiple thereof, for general purposes with the approval of a majority of the voters. Section 7285.5 permits the board of supervisors of any county to levy a transactions and use tax at a rate of 0.25 percent, or multiple thereof, for specific purposes with the approval of two-thirds of the voters.

Section 7286.59 of the Transactions and Use Tax Law authorizes counties to impose a transactions and use tax, subject to two-thirds voter approval, at a rate of 0.125 percent or 0.25 percent for a period not to exceed 16 years. The revenues derived from the tax are used exclusively to fund public library construction, acquisition, programs, and operations within the county.

Section 7262.7 authorizes the County of Stanislaus to impose a transactions and use tax at a rate of 0.125 percent for a period not to exceed five years. The revenues derived from the tax are used exclusively to fund countywide library programs and services.

Proposed Law

This bill would repeal the statute that authorizes the County of Stanislaus to impose a transactions and use tax at a rate of 0.125 percent for a period not to exceed five years for the funding of countywide library programs and services.

Background

AB 2787 (Stats. 1994, Chapter 244) added Section 7262.7 to the Revenue and Taxation Code to authorize the County of Stanislaus to impose a transactions and use tax at a rate of 0.125 percent for a period not to exceed five years for funding of countywide library programs and operations. The County of Stanislaus may impose a transactions and use tax for any subsequent period not to exceed five years per period as long as the provisions of Section 7262.7 are met.

The voters of Stanislaus County approved an ordinance to impose a transactions and use tax under the provisions of Section 7262.7, effective July 1, 1995. This tax had an expiration date of June 30, 2000. On June 8, 1999, voters approved a measure to extend the tax for an additional five year period, effective July 1, 2000. This tax has an expiration date of June 30, 2005.

SB 154 (Stats. 1997, Chapter 88) added Section 7286.59 to the Revenue and Taxation Code to authorize counties to impose a transactions and use tax at a rate of 0.125 or 0.25 percent for a period not to exceed 16 years. The revenues derived from the tax are to be used for the funding of public library construction, acquisition, programs, and operations within the county. Counties may impose a transactions and use tax for any subsequent period not to exceed 16 years per period as long as the provisions of Section 7286.59 are met.

Comments

Sponsor and Purpose. This provision is sponsored by the County of Stanislaus. An analysis prepared by the Senate Revenue and Taxation Committee disclosed that the board of supervisors of Stanislaus County are seeking to repeal Section 7262.7 so that Stanislaus County "may be treated equally to all other counties as it relates to the imposition of transactions and use taxes for library purposes."

Does Section 7262.7 need to be repealed? Section 7262.7 is a special statute that relates only to the County of Stanislaus, while Section 7286.59 is a general statute that applies to any county. By repealing Section 7262.7, the question regarding which statute applies is eliminated. Stanislaus County would be authorized under Section 7286.59 to be able to impose a transactions and use tax at a rate of 0.25 percent (instead of a rate of only an 0.125 percent) for a period not to exceed 16 years (instead of 5 years). Therefore, the repeal of this section not only eliminates any doubt as to which statute applies, but it allows Stanislaus County to choose between two rates (0.125 or 0.25 percent) and to impose the tax for a longer period of time (up to 16 years).

As previously stated, Stanislaus County currently imposes a transactions and use tax at a rate of 0.125 percent for the exclusive funding of countywide library programs and services. This tax is due to expire on June 30, 2005. If Section 7262.7 is repealed, this tax will remain in effect until voters approve a new tax under the provisions of Section 7286.59.

Exclude racing fuel from the definition of motor vehicle fuel
Revenue and Taxation Code Section 7326

Current Law

Under existing law, Section 7360 of the Revenue and Taxation Code (Motor Vehicle Fuel Tax Law) imposes the motor vehicle fuel tax on the removal of motor vehicle fuel in this state from a terminal if the motor vehicle fuel is removed at the rack. "Motor vehicle fuel" is defined pursuant to Section 7326 to mean gasoline and aviation gasoline. It does not include jet fuel, diesel fuel, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, or alcohol. Racing fuel, which is not specifically excluded from the definition of "motor vehicle fuel", is subject to the motor vehicle fuel tax upon its removal at the rack.

Proposed Law

This bill would revise the definition of "motor vehicle fuel" to specifically exclude "racing fuel."

Comment

Racing fuel is specifically manufactured, distributed and used for racing motor vehicles at a racetrack. It is understood that racing fuel is not formulated for use on the public highways and therefore is not subject to tax in any event. Therefore, persons buying racing fuel must first pay the motor vehicle tax and subsequently apply for a refund pursuant to Section 8101 of the Motor Vehicle Fuel Tax Law. Section 8101 generally provides that a person who has paid a tax for motor vehicle fuel, either directly or to the vendor from whom it was purchased, or indirectly by the adding of the amount of the tax to the price of the fuel, shall be reimbursed and repaid the amount of the tax if that person buys and uses the motor vehicle fuel for purposes other than operating motor vehicles upon the public highways of the state.

Prior to January 1, 2002, racing fuel was excluded from the definition of motor vehicle fuel. Therefore, racing fuel was not at any time subject to the tax. However, when the Motor Vehicle Fuel Tax Law was revised to move the point of imposition of tax on motor vehicle fuel from the first distribution of the fuel to the removal from the rack pursuant to Assembly Bill 2114 (Stat. 2000, Ch. 1053, Longville), the longstanding exclusion for racing fuel was inadvertently omitted from the definition. As a result, racing fuel became subject to tax upon its removal from the rack as of January 1, 2002, the operative date of AB 2114. Excluding racing fuel from the definition of motor vehicle fuel would be beneficial both for the taxpayer and for the state in that it would eliminate the need for filing a claim for refund for purchases of fuel that is not subject to tax.

Filing period for refunds on tax paid fuel
Revenue and Taxation Code Sections 8105 and 60507

Current Law

Under the existing Motor Vehicle Fuel Tax Law, a person who pays tax on motor vehicle fuel may apply for a refund on certain uses, sales and removals listed in Revenue and Taxation Code Section 8101. Among the uses for which a refund claim may be filed is the export of the fuel for use outside California. The claim for refund must be filed with the State Controller and supported by the original invoice showing the purchase of the fuel. Section 8105 requires that the claim for refund be filed within three years from the date of the purchase of the fuel.

Likewise, under the existing Diesel Fuel Tax Law, a person who pays tax on diesel fuel may apply for a refund on certain uses, sales and removals listed in Revenue and Taxation Code Section 60501. Among the uses for which a refund claim may be filed is the export of diesel fuel for use outside California. The claim for refund must be filed with the Board and be supported by specified information. Section 60507 requires that the claim for refund be filed within three years from the date of the purchase of the fuel.

Proposed Law

This bill would allow for a refund claim to be filed within three years from the date of purchase or six months after the receipt of an invoice for the tax when the tax was not invoiced at the time of the purchase of the fuel, whichever period expires later.

Comment

This bill addresses a problem that has arisen during the course of fuel company audits and is intended to authorize the State Controller and the Board to accept claims for refund of tax from purchasers of fuel who otherwise would be entitled to a refund, but, due to circumstances beyond their control, are barred by the existing statute of limitations from applying for a refund.

In most situations, the statute of limitations for filing a claim for refund of tax presents no problem because tax is paid on the fuel at the time of purchase and a timely refund claim can be filed by the purchaser for tax-paid fuel used in an exempt manner. Sometimes, a supplier that properly documents a sale of fuel for export may sell fuel ex-tax to a purchaser who in fact exports the fuel. Because no tax is owed and because the supplier has properly documented the sale for export transaction, no refund claim is necessary.

A problem does arise, however, if a supplier fails to meet the statutory requirements for making an ex-tax sale of fuel to a purchaser for export. This fact may be uncovered several months or years after the transaction occurred during the course of an audit of the supplier. While the supplier may owe the tax, the purchaser may not if the use was exempt from tax. Nevertheless, if the supplier pays the tax to the State, then it will charge its customer for the tax, the customer must pay the supplier and then seek a refund of tax from the State. In some cases, a purchaser's claim for refund may be barred by the statute of limitations because the supplier's invoice for tax to the customer may be issued more than three years after the date of the purchase of the fuel. When a purchaser's claim for refund is barred by the statute of limitations, the only recourse for the purchaser is to file a claim with the Victims Compensation and Government Claims Board for the amount of the tax. Board staff would likely recommend to the Victims Compensation and Government Claims Board that the claim be granted because the fuel was exported and was not used on a California highway.

Correct an inadvertent drafting error
Revenue and Taxation Code Section 60022

Current Law

Under existing Diesel Fuel Tax Law, Section 60022 of the Revenue and Taxation Code generally defines the term “diesel fuel” to mean any liquid that is commonly or commercially known or sold as a fuel that is suitable for use in a diesel-powered highway vehicle. Specifically excluded from the definition of diesel fuel is, among other things, the water in a diesel fuel and water emulsion of two immiscible liquids of diesel fuel and water, which emulsion contains an additive that causes the water droplets to remain suspended within the diesel fuel, provided the diesel fuel emulsion meets standards set by the California Air Resources Board. This specific exclusion will remain in effect until January 1, 2007.

In addition, effective January 1, 2007, Section 60022 will provide that “diesel fuel” includes any combustible liquid, by whatever name the liquid may be known or sold, when the liquid is used in an internal combustion engine for the generation of power to operate a motor vehicle licensed to operate on the highway, except fuel that is subject to the motor vehicle fuel tax or use fuel tax.

Proposed Law

This bill would correct an inadvertent drafting error in Section 60022, operative January 1, 2007, enacted pursuant to AB 86XX thereby not repealing Board-sponsored amendments as contained in AB 309.

Comment

In 2001, both Assembly Bill 86XX (Ch. 8 of the Second Extraordinary Session, Florez) and Assembly Bill 309 (Ch. 429, Longville) amended Section 60022 of the Diesel Fuel Tax Law. Assembly Bill 86XX amended Section 60022 to exclude "water in a diesel fuel and water emulsion" from the definition of diesel fuel until January 1, 2007.

Assembly Bill 309 (Ch. 429, Longville), a Board-sponsored measure, amended Section 60022 to specify that diesel fuel does not include gasoline, liquid petroleum gas, natural gas in liquid or gaseous form, or alcohol in addition to kerosene. Additionally, Assembly Bill 309 proposed to delete the reference that diesel fuel includes any combustible liquid when the liquid, as specified, is used in an internal combustion engine for the generation of power to operate a motor vehicle licensed to operate on the highway, except fuel that is subject to the Motor Vehicle Fuel Tax (commencing with Section 7301) or the Use Fuel Tax (commencing with Section 8601).

Since both AB 86XX and AB 309 proposed to amend Section 60022 of the Diesel Fuel Tax Law, double-joining language was added to each of the bills. However, the double-joining language contained in AB 86XX, which was enacted after AB 309, inadvertently repeals the provisions enacted by AB 309 as of January 1, 2007.

Add terms to the Diesel Fuel Tax Law
Revenue and Taxation Code Sections 60604 and 60606

Current Law

Under existing Diesel Fuel Tax Law, Section 60604 of the Revenue and Taxation Code requires every interstate user, supplier, exempt bus operator, government entity, ultimate vendor, highway vehicle operator, train operator, and every person dealing in, removing, transporting, or storing diesel fuel in this state to keep those records, receipts, invoices, and other pertinent papers with respect thereto in that form as the Board may require.

In addition, Section 60606 provides that the Board or its authorized representative may examine the books, records, and equipment of any interstate user, supplier, exempt bus operator, government entity, ultimate vendor, highway vehicle operator, train operator, or person dealing in, removing, transporting, or storing diesel fuel and may investigate the character of the disposition that the interstate user, supplier, exempt bus operator, government entity, ultimate vendor, highway vehicle operator, train operator, or person makes of the diesel fuel in order to ascertain whether all diesel fuel taxes due are being properly reported and paid.

Proposed Law

This bill would amend Sections 60604 and 60606 to clarify that a "qualified highway vehicle operator," "highway vehicle operator/fueler," "pipeline operator," and "vessel operator" is required to maintain records and that the Board is authorized to examine the records of such persons.

Comment

In 2001, Assembly Bill 309 (Ch. 429, Longville) added the terms "qualified highway vehicle operator," "highway vehicle operator/fueler," "pipeline operator" and "vessel operator" to the Diesel Fuel Tax Law. However, those terms were inadvertently not included in Sections 60604 and 60606. Since a qualified highway vehicle operator, highway vehicle operator/fueler, pipeline operator, and vessel operator each deal in diesel fuel and file returns and reports, the record keeping sections were intended to specifically identify them, consistent with all other taxpayers under the Diesel Fuel Tax Law.

COST ESTIMATE

Any costs associated with these Board-sponsored provisions would be absorbable. There are no costs associated with the repeal of Section 7262.7 of the Transactions and Use Tax Law.

REVENUE ESTIMATE

These Board-sponsored provisions are not expected to have a material impact on state revenues. The repeal of Section 7262.7 of the Transactions and Use Tax Law would not impact state or local revenues.

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